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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 RICHARD A. KIRKHAM, ) CASE NO. C05-1274-RSM-MAT  
09 Plaintiff, )  
10 v. ) ORDER GRANTING DEFENDANT'S  
11 J.I. BELFORD, Detective, ) MOTION TO STAY §1983 ACTION  
King County Sheriff's Office, )  
12 Defendant. )  
13 \_\_\_\_\_ )

14 This is a civil rights action filed under 42 U.S.C. § 1983. Plaintiff alleges in his complaint  
15 that defendant Belford violated his rights under the Fourth Amendment. Specifically, plaintiff  
16 complains that defendant Belford exceeded the scope of a warrant authorizing the search of  
17 plaintiff's jail cell and the seizure of specified letters and packages when defendant Belford seized  
18 a letter from another inmate, Ms. Sadie Eggleston. Plaintiff contends that this illegally seized letter  
19 was turned over to prosecutors who used it to create a hostile witness in his state court criminal  
20 proceedings.

21 Defendant has been served with the complaint and he now moves to stay this action under  
22 the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37 (1971), on the grounds that

01 plaintiff's Fourth Amendment claim will be addressed in his upcoming state court criminal  
02 proceedings. The *Younger* abstention doctrine precludes federal injunctions of pending state  
03 criminal prosecutions absent extraordinary circumstances where the danger of irreparable harm  
04 is both great and immediate. *See Younger v. Harris*, 401 U.S. 37 (1971). In *Gilbertson v.*  
05 *Albright*, 381 F.3d 965 (9th Cir. 2004), the Ninth Circuit concluded that *Younger* abstention  
06 principles apply to damages actions as well as to actions for injunctive and declaratory relief. The  
07 Ninth Circuit also concluded in *Gilbertson* that where abstention principles apply, a damages  
08 action should be stayed rather than dismissed.

09 Plaintiff argues in his response in opposition to defendant's motion that the Fourth  
10 Amendment claim raised in these proceedings has already been litigated and resolved in the King  
11 County Superior Court and that a stay is therefore not warranted. In support of this argument,  
12 plaintiff offers the transcript of a June 17, 2005, King County Superior Court hearing where the  
13 Eggleston letter was discussed by plaintiff, the prosecutor, and the court. This Court's review of  
14 the transcript reflects a general agreement by the parties that the Eggleston letter seized from  
15 plaintiff's cell will not directly impact his criminal case. (*See* Dkt. No. 12 at 13-16.) However,  
16 the transcript also reflects that plaintiff is likely to bring a motion to suppress additional evidence  
17 in his criminal case which was obtained as a result of the alleged illegal seizure of the Eggleston  
18 letter. (*Id.* at 13-16 and 51.) Any such motion would put at issue the legality of the original  
19 seizure.

20 Because it appears likely that plaintiff's Fourth Amendment claim will be litigated in his  
21 state court criminal proceedings, and because plaintiff makes no showing of extraordinary  
22 circumstances which would justify this Court's intervention in those proceedings, *Younger*

01 abstention principles apply. Thus, under *Gilbertson*, this Court must stay plaintiff's civil rights  
02 action.

03 Accordingly, defendants' motion to stay these proceedings (Dkt. No. 9) is GRANTED  
04 and this action is STAYED pending notification from the parties that plaintiff's criminal  
05 proceedings have been fully resolved in the state courts. The Clerk is directed to send copies of  
06 this Order to plaintiff, to counsel for defendant, and to the Honorable Ricardo S. Martinez.

07 DATED this 14th day of October, 2005.

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09 Mary Alice Theiler  
10 United States Magistrate Judge  
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